

ORIGINAL

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
Nov 2 2 15 PM '93

DISC MM Docket No. 93-273

In re Applications of:

THE UNIVERSITY File No. BPED-920316ME
FOUNDATION
CALIFORNIA STATE
UNIVERSITY AT CHICO
(hereafter "Foundation")
Redding, California

For Construction Permit for a
New Noncommercial FM Station on
Channel 215 in Redding, California

STATE OF File No. BPED-920630ME
OREGON ACTING
BY AND THROUGH
THE STATE BOARD OF
HIGHER EDUCATION
AND FOR SOUTHERN
OREGON STATE COLLEGE
(hereafter "Oregon")

For Modification of
Noncommercial Station KSKF(FM),
Klamath Falls, Oregon

HEARING DESIGNATION ORDER

Adopted: October 15, 1993; Released: November 2, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications, one for a new noncommercial FM station and one for modification of an existing noncommercial FM station.

2. *Foundation.* Foundation indicated in Section III, Item 1 of FCC Form 340 (May 1989) that its application is contingent upon receipt of a grant from the National Telecommunications and Information Administration (NTIA). Commission records indicate that Foundation has received funds to construct a station in Redding, California, on

either Channel 215C2 or Channel 205C1. On September 29, 1992, the Commission granted a construction permit to Foundation for Channel 205C1 (BPED-880610ML) pursuant to Foundation's decision to apply the NTIA funds to that proposal. Accordingly, a financial qualifications issue will be specified.

3. *Share-time agreement.* It does not appear that the applicants have discussed a possible share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49,560 (October 24, 1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing, or at anytime during the course of the hearing, from participating in negotiations with a view toward establishing a share-time arrangement.

4. *Section 307(b).* The respective proposals are for different communities. Consequently, it will be necessary to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio services.

5. *Other matters.* Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

6. Foundation filed an amendment to its application after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed.¹ Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED. That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

¹ Foundation indicated in its application that there were unresolved character issues in the prior proceeding involving the Redding, California application for Channel 205C1 (BPED-880610ML). The issues were resolved and Foundation's construction permit was granted by letter on September 29, 1992. Oregon filed a petition for reconsideration of that grant on November 6, 1992. Oregon also filed an application for a new noncommercial FM station to serve Redding, California (BPED-

900129MH). Oregon's application was mutually exclusive with Foundation's application. In a letter dated June 21, 1990, the Chief of the FM Branch returned Oregon's application as unacceptable for filing. On August 13, 1990, Oregon filed an application for review of that action. The application for review was denied on May 18, 1993, and on June 17, 1993, Oregon filed a petition for reconsideration of that action.

1. To determine whether Foundation is financially qualified.

2. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof; and (c) in light of 47 U.S.C. Section 307(b), which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if either.

9. IT IS FURTHER ORDERED, That the amendment filed by Foundation IS ACCEPTED to the extent indicated herein.

10. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

11. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau